

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 15 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0325-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MANUEL MARIO RIVADENEYRA,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20003446

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Ronald Zack PLC  
By Ronald Zack

Tucson  
Attorney for Petitioner

H O W A R D, Chief Judge.

¶1 Petitioner Manuel Rivadeneyra seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged he had received ineffective assistance of counsel. "We will not

disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Rivadeneyra has not sustained his burden of establishing such abuse here.

¶2 In 2001, after a jury trial in absentia, Rivadeneyra was convicted of attempted second-degree murder, two counts of aggravated assault, and two counts of simple assault, all arising from his having stabbed two people during a fight in 2000. Rivadeneyra was arrested in 2006 and was found incompetent to stand trial at that time. After he was restored to competency, the trial court held hearings as to his mental condition at the time of trial and concluded his absence from trial had been voluntary. The court later granted Rivadeneyra's motion for new trial on the attempted murder conviction and sentenced him to concurrent terms of 7.5 years' imprisonment on each of the aggravated assault convictions and to time served on the simple assault convictions. He appealed, and this court affirmed his convictions and sentences for the assaults.

¶3 Thereafter, Rivadeneyra initiated proceedings pursuant to Rule 32, arguing in his petition that he had "received ineffective assistance of counsel" on several grounds. He maintained counsel had been ineffective in failing to object to his trial in absentia, failing to present the trial court with a letter about his whereabouts brought to counsel by Rivadeneyra's sister, and failing otherwise to "challenge the in absentia trial." He also argued counsel should have consulted an expert and challenged the testimony of the state's expert about the injuries sustained by one of the victims. And he asserted counsel was ineffective because he "did not call . . . an extremely credible witness who [had seen] the incident and could [have] provide[d] strong evidence of self defense." Finally, he claimed counsel should have objected to a jury instruction given on self defense.

¶4 The trial court summarily denied relief on Rivadeneyra’s petition, finding he had failed to state a colorable claim based on any of his allegations. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (“To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.”). On review, Rivadeneyra essentially reiterates the arguments he made below, arguing counsel’s performance had been deficient and he had been prejudiced by it.

¶5 We cannot say the court abused its discretion in denying the petition for post-conviction relief. The court clearly identified the claims Rivadeneyra had raised and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”). Thus, we grant the petition for review but deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge